

**VILLAGE OF GROSSE POINTE SHORES,  
A MICHIGAN CITY**

**ORDINANCE NO. 254**

**COST RECOVERY ORDINANCE**

An ordinance to amend and restate Chapter 2, Article IV, Division 3 of the City Code of Ordinances, entitled "Cost Recovery," so as to broaden the type of costs that may be recovered by the City for emergency responses; to comply with changes in state law; and to repeal inconsistent ordinances.

**VILLAGE OF GROSSE POINTE SHORES, A MICHIGAN CITY, ORDAINS:**

I. Subdivisions II-IV of Division 3 of Chapter 2, Article IV of the Ordinance Code of Village of Grosse Pointe Shores, A Michigan City, are amended and restated to provide as follows:

***Subdivision II. Cost Recovery for Emergency Responses.***

- A. Definitions. For the purpose of this subdivision, the words and phrases listed below shall have the following meanings:

*Costs of the emergency response* shall mean the actual costs incurred by the City, and by any other governmental or intergovernmental entity providing services at the request or direction of the City, as the result of an emergency response. Such costs shall include, without limitation:

- (1) All labor costs (including wages, salaries, fringe benefits, and reimbursable expenses) of all personnel responding to the emergency incident and all personnel engaged in the investigation, supervision and report preparation relating to the emergency incident;
- (2) All costs for materials, supplies, and equipment utilized or damaged in connection with an emergency incident and emergency response;
- (3) All costs for the repair or replacement of public property damaged or destroyed in connection with or as a direct or indirect result of an emergency incident and emergency response;
- (4) Investigation of an emergency incident giving rise to an emergency response and fire fighting, emergency services, cleaning up, inspecting, testing, abating, mitigating, restoring and crowd control at the site of an emergency response;

(5) All costs for labor and services for which the City had to contract in connection with or as a direct or indirect result of an emergency incident and emergency response; and

(6) Any other expenses incurred by the City, and by any other governmental or intergovernmental entity providing services at the request or direction of the City's Department of Public Safety, in connection with or as a direct or indirect result of an emergency incident and emergency response.

*Dangerous or hazardous substance or material* means any and all substances, compounds, mixtures or materials that are defined to be, designated as, listed as, or which have characteristics that are hazardous or toxic under any federal, state or local statute, ordinance, rule or regulation, or under the Relevant Environmental Laws.

*Emergency incident* means a fire, accident, utility emergency, incident involving a dangerous or hazardous substance or material, arson, technical rescue, or other emergency situation.

*Emergency response* means the provision/utilization of environmental removal and/or cleanup, fire fighting, emergency medical, crowd control, investigatory or rescue services by the City, or by a private corporation or governmental or intergovernmental entity or agency operating at the request of or direction of the City, as well as repairs to damaged public property undertaken by or at the direction or request of the City. This definition shall include, but not be limited to, the provision/utilization of the City's fire fighting/emergency medical/rescue services, including resuscitator and emergency extrication service, to the scene of a fire, accident, utility emergency, hazardous material release, arson, or other emergency situation.

*Environmental cleanup* means removal, abatement, mitigation and restoration activities necessitated by any release or threatened release of a dangerous or hazardous substance or material of unknown composition reasonably believed to be dangerous or hazardous.

*Person* shall include one or more individuals and/or corporate, unincorporated or partnership entities, including governmental entities and agencies.

*Public property* means real and/or personal property of a governmental entity, including, but not limited to, the City.

*Relevant Environmental Laws* shall mean all applicable federal, state and local statutes, laws, ordinances, rules, regulations, orders, judicial determinations, and decisions or determinations by any judicial, legislative or executive body of any governmental or quasi-governmental entity, whether in the past, the present or the future, that regulate, prohibit, or impose duties or liabilities with respect to (i) the

installation, existence, or removal of, or exposure to, asbestos on the property; (ii) performing or paying for testing, investigation, remedial actions, response actions, response activities, clean up, fines or penalties relating to hazardous materials that are or were present, released, discharged, disposed, stored, manufactured, treated, or utilized at or from the property; (iii) the existence, manufacture, treatment, storage, use, release, disposal, discharge, manufacture, remedy, or removal of hazardous materials at, to or from the property; and (iv) the effects on the environment of the property or of any activity now, previously, or hereafter conducted on the property.

*Utility emergency* means downed power lines, gas pipeline breaks, or other mishaps occurring in connection with the activities of public utilities or their suppliers which necessitate a response by the Department of Public Safety or cause damage to public property.

B. Liability for Costs of the Emergency Response. The following persons or entities shall be presumed jointly and severally liable for the costs of an emergency response:

- 1) The owner, lessor and/or operator of any property to which there is an emergency response.
- 2) Any person or vehicle owner/lessee who owns, leases and/or operates a motor vehicle or other transporter or equipment, the operation of which results in an emergency response.
- 3) Any individual who is the subject of an emergency response by the City.
- 4) Any person causing a fire, an accident, or any release giving rise to a need for environmental cleanup or other emergency response.
- 5) A public utility whose activities or facilities necessitated the emergency response.

C. Dangerous or hazardous substances/materials liability.

- 1) It shall be the duty of any person who causes or controls leakage, spillage, or any other dissemination of dangerous or hazardous substances or materials to immediately remove such and clean up the area of the spillage in such a manner that the area involved is fully restored to its condition before such occurrence. The Department of Public Safety shall be contacted to inspect said site to make sure that the cleaning is in compliance with local, state, and federal guidelines, regulations, and laws.
- 2) Any person who violates this ordinance by failing to clean, without delay, a dangerous or hazardous substance release, shall be liable to and pay the City for its costs incurred, or incurred by any party which the City may



engage for the complete abatement, mitigation, cleanup, restoration and inspection of the affected area, and shall additionally be guilty of a misdemeanor punishable by up to 90 days' imprisonment or a fine of up to \$500.00, or both.

D. Cost recovery process.

- 1) The costs of an emergency response shall be a charge against the person liable for such expense as set forth by this ordinance. The charge shall constitute a debt of that person and is collectible by the City for incurring those costs in the same manner as any other debt, or may be made the subject of an order of restitution in any criminal prosecution.
- 2) The City shall be entitled to recover any and all costs of emergency responses. Such costs shall include, but are not limited to, any related third party costs which are necessary to ensure the safety of the City and its populace and buildings.
- 3) The Director of Public Safety or designee may submit a statement of charges for the costs of an emergency response by first class mail to any such person whose identity and address may be ascertained by the City. Such a statement may also be transmitted via facsimile or other electronic means if such means are reasonably determined to provide actual notice to the intended recipient. Said statement shall require payment within forty-five (45) days.
- 4) Any person receiving such a statement shall have the opportunity to appeal all or any portion of the amount shown on such statement by filing a written request for appeal with the City Manager within thirty (30) days of receipt of an invoice from the City. The request must be accompanied by a written explanation as to why the amount appealed should not be charged to the appellant. Appeals shall be heard by the City Manager or a designee, as hearing officer. If the hearing officer determines that the appellant is not properly responsible for any or all of the amount charged, the hearing officer may waive all or part of such charge against the appellant. The findings and decisions of the hearing officer shall be in writing.
- 5) If no written request for appeal is received within the specified time, the City may proceed by suit in a court of appropriate jurisdiction to collect any monies remaining unpaid at the expiration of forty-five (45) days from billing, or, if no bill is submitted, at any time subsequent to the emergency response in question.
- 6) In addition to seeking to recover the costs of an emergency response, the City shall have any other remedy available to the City by law.

***Subdivision III. Cost Recovery as Part of Sentence for Conviction of Certain Offenses.***

- A. As part of the sentence for a conviction of any of the following offenses, in addition to any other penalty authorized by law, a Court may order the person convicted to reimburse the City for expenses incurred in relation to that incident, including, but not limited to, costs for an emergency response and for prosecuting the person, as provided in this section:
- 1) A violation or attempted violation of section 601d, 625(1), (3), (4), (5), (6), or (7), section 625m, or section 626(3) or (4) of the Michigan vehicle code, 1949 PA 300, MCL §§257.601d, 257.625, 257.625m, and 257.626.
  - 2) A violation or attempted violation of section 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL §324.82127.
  - 3) A violation or attempted violation of section 81134 or 81135 of the natural resources and environmental protection act, 1994 PA 451, MCL §§324.81134 and 324.81135.
  - 4) A violation or attempted violation of section 80176(1), (3), (4), or (5) of the natural resources and environmental protection act, 1994 PA 451, MCL §324.80176.
  - 5) A violation or attempted violation of section 411a(2) of the Michigan penal code, 1931 PA 328, MCL §750.411a.
  - 6) A finding of guilt for criminal contempt for a violation of a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL §§600.2950 and 600.2950a, or for a violation of a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL §600.2950i.
- B. The expenses for which reimbursement may be ordered under this section include all of the following:
- 1) The salaries or wages, including overtime pay, of Department of Public Safety personnel for time spent responding to the incident from which the conviction arose, arresting the person convicted, processing the person after the arrest, preparing reports on the incident, investigating the incident, and collecting and analyzing evidence, including, but not limited to, determining bodily alcohol content and determining the presence of and identifying controlled substances in the blood, breath, or urine.

- 2) The salaries, wages, or other compensation, including overtime pay, of Department of Public Safety personnel, including volunteer fire fighters or volunteer emergency medical service personnel, for time spent in responding to and providing fire fighting, rescue, and emergency medical services in relation to the incident from which the conviction arose.
  - 3) The cost of medical supplies lost or expended by Department of Public Safety personnel, including volunteer fire fighters or volunteer emergency medical service personnel, in providing services in relation to the incident from which the conviction arose.
  - 4) The salaries, wages, or other compensation, including, but not limited to, overtime pay of prosecution personnel for time spent investigating and prosecuting the crime or crimes resulting in conviction.
  - 5) The cost of extraditing a person from another state to this state.
- C. If Department of Public Safety or police, fire department, or emergency medical service personnel from more than 1 unit of government incurred expenses as described in subsection (B), the Court may order the person convicted to reimburse each unit of government for the expenses it incurred.
- D. The amount ordered to be paid under this section shall be paid to the Clerk of the Court, who shall transmit the appropriate amount to the unit or units of government named in the order to receive reimbursement. If not otherwise provided by the Court under this subsection, the reimbursement ordered under this section shall be made immediately. However, the Court may require that the person make the reimbursement ordered under this section within a specified period or in specified installments.
- E. If the person convicted is placed on probation, any reimbursement ordered under this section shall be a condition of that probation. The Court may revoke probation if the person fails to comply with the order and if the person has not made a good faith effort to comply with the order. In determining whether to revoke probation, the Court shall consider the person's employment status, earning ability, number of dependents, and financial resources, the willfulness of the person's failure to pay, and any other special circumstances that may have a bearing on the person's ability to pay.
- F. An order for reimbursement under this section may be enforced City in the same manner as a judgment in a civil action.
- G. Notwithstanding any other provision of this section, a person shall not be imprisoned, jailed, or incarcerated for a violation of probation, or otherwise, for failure to make a reimbursement as ordered under this section unless the Court

determines that the person has the resources to pay the ordered reimbursement and has not made a good faith effort to do so.

## II. Miscellaneous Provisions

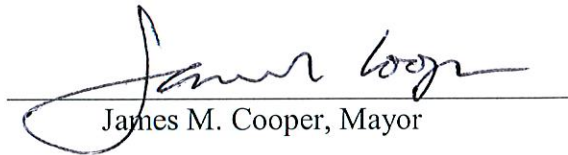
- A. Severability. If a word, clause, sentence, paragraph or part of this ordinance shall be found invalid or unconstitutional by any court of competent jurisdiction, it shall not affect the remainder of this ordinance and such remainder shall remain in full force and effect.
- B. Inconsistent Ordinances Repealed. All ordinances or parts of ordinances in conflict, or inconsistent with this ordinance are hereby repealed.
- C. Effective Date; Publication. This ordinance shall take effect immediately upon publication of this ordinance, or a synopsis thereof, in a newspaper circulated in Village of Grosse Pointe Shores, A Michigan City, which publication shall be within 16 days after passage.

Passed:

December 21, 2010



Brian P. Vick, City Clerk

  
James M. Cooper, Mayor